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EXAMINER

BUTLER, M

ART UNIT

PAPER NUMBER

3651

10

DATE MAILED:

11/16/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/014,076

Applicant(s)
McGrady et al.

Examiner
Michael E. Butler

Group Art Unit
3651



☒ Responsive to communication(s) filed on Aug 30, 2000

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

- ☒ Claim(s) 38-53 is/are pending in the application
- ☐ Of the above, claim(s) _____ is/are withdrawn from consideration
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 38-53 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

Priority

2. Priority is acknowledged that this application claims priority as a divisional application of 08/361783 which is a CIP of 08/186285 which is a CIP of 08/009055.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 38-41, 43, and 45-47, as in paper number 5, along with new claims 48-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Pearson '232. Pearson '232 discloses:

(re :cl 38, 48) A method for tracking and dispensing medical items comprising the steps of: placing at least one unit of a plurality of types of medical items in a plurality of storage locations, wherein each storage location holds only one type of medical item at a time (col. 3 L 22-39; c4 L 33-49);

inputting patient identifying data to a data entry device, wherein the patient identifying data corresponds to a patient (col. 2 L 27-34; col. 3 L 5-20);

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removing one unit of a type medical item from a storage location with a dispenser mechanism (col. 5 L 42-col. 6 L 2 ;col. 5 L 9-35);

modifying a data store using a processor in operative connection with the data store, wherein the processor is in operative connection with the data entry device and the dispenser mechanism, wherein the data store includes data representative of the patient and data representative of the type medical item stored in the storage location (col. 6 L 18-23), and

wherein the data store is modified responsive to the removing step and the inputting step, to include data representative of the dispense of the type medical item for the patient (col. 3 L 5-20; col. 2 L 8-34);

(re: cl 39) the data store further includes data representative of a plurality of authorized users (col. 4 L 60-col. 5 L 8);

and prior to the removing step further comprising the steps of: receiving user identifying data from a user through a user data entry device, determining with the processor whether the input user identifying data corresponds to data for an authorized user stored in the data store, wherein the processor operatively controls the dispenser device to enable performance of the removing step only when the input user identifying data corresponds to an authorized user (col. 4 L 60-col. 5 L 8);

(re:cl 40) wherein in the modifying step the data store is further modified to include data representative of a record that the authorized user determined is the determining step dispensed the type medical item (col. 6 L 6-32);

(re:cl 41) prior to the removing step further receiving user identifying data from a further user through the user data entry device and further determining with the processor

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whether the input user identifying data from the further user corresponds to data for an authorized user stored in the data store, other than the authorized user determined in the first determining step, and wherein the removing step is enabled to be performed only when the data received in the receiving and further receiving steps corresponds to two different authorized users (col. 4 L 60-col. 5 L 8);

(re:cl 43) after the removing step further comprising the step of sensing with a verification sensor the dispense of the type medical item removed in the removing step, wherein the verification sensor is in operative connection with the processor, and wherein the modifying step is not performed if the dispense of the item is not sensed in the sensing step by the verification sensor in the sensing step (col. 5 L 9-47);

(re:cl 45) the removing step includes opening an electronic lock drawer (col. 5 L 1-8);

(re: cl 46) wherein the removing step includes releasing one container from a magazine holding a plurality of containers (col. 3 L 22-39); (re: cl 47) wherein the removing step includes opening a lock to enable access to a storage location (col. 5 L 1-8);

(re: cl 49) receiving user identifying data from a user through at least one input device (c 4 L 60-63);

determining through operation of at least one processor that the user identifying data input in step (a) corresponds to authorized user data in at least one data store that is in operative connection with the at least one processor (c4 L 60-63);

inputting medical item data corresponding to a type medical item through at least one input device in operative connection with the at least one processor (c 2 L 29-36);

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providing access to at least one of the type medical item to the user from a storage device responsive to performance of at least one of steps (b) and (d) (5 L 1-35);

storing data in at least one data store in operative connection with the at least one processor indicating that the at least one of the type medical item has been provided for the patient (c 4 L 60-67);

(re: cl 50) dispensing the at least one of the type medical item from a dispenser device (c 5 L 1-35);

(re: cl 51) unlocking a drawer to enable access to the at least one of the type medical item (c3 L 22-61);

(re: cl 52) releasing the at least one of the type medical item from a device holding such type item (c 5 L 1-35).

(re: cl 53) opening the at least one lock to enable access to the storage location (c3 L 22-61).

5. Claims 48-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Pearson '029.

Pearson '029 discloses:

(re: cl 48) placing at least one unit of a plurality of types of medical items in a plurality of storage locations, wherein each storage location holds only one type of medical item at a time (c 5 L 14-16);

inputting patient identifying data through at least one data entry device, wherein the patient identifying data corresponds to a patient (c 5 L 14-21);

removing at least one unit of a type medical item from a storage location with a dispenser mechanism (c5 L 32-46);

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modifying data in at least one data store through operation of at least one processor, wherein the at least one processor is in operative connection with the at least one data store, the data entry device and the dispenser mechanism, wherein the data is modified responsive to performance of steps (b) and (c) to include data representative of the dispense of the type medical item for the patient (c 5 L 32-46);

(re: cl 49) receiving user identifying data from a user through at least one input device (c 5 L 14-21);

determining through operation of at least one processor that the user identifying data input in step (a) corresponds to authorized user data in at least one data store that is in operative connection with the at least one processor (c 5 L 14-21);

inputting patient identifying data through at least one input device in operative connection with the at least one processor, wherein the patient identifying data corresponds to a patient (c 5 L 14-21);

inputting medical item data corresponding to a type medical item through at least one input device in operative connection with the at least one processor (c 2 L 29-36);

providing access to at least one of the type medical item to the user from a storage device responsive to performance of at least one of steps (b) and (d) (5 L 22-46);

storing data in at least one data store in operative connection with the at least one processor indicating that the at least one of the type medical item has been provided for the patient (2 L 29-56);

(re: cl 50) step (e) includes dispensing the at least one of the type medical item from a dispenser device (c 5 L 22-46);

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(re: cl 52) step (e) includes releasing the at least one of the type medical item from a device holding such type item (c 5 L 22-46).

6. Claims 48-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Halverson. Halverson discloses:

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 39-43 and 45-47, and 49-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearson '232 in view of Meador et al as in paper number 5. Pearson '232 discloses the elements previously discussed and further discloses: receiving manually input data (col. 4 L 60-col. 5 L 8; col. 3 L 5-20). Pearson '232 does not disclose receiving data read from an object. Meador et al. discloses: receiving data read from an object (col. 5 L 12-25). It would have been obvious to substitute the manual data of entry Pearson '232 with the object read data because read data entry is more accurate, faster, and less prone to human input error than manual entry as taught by Meador et al..

9. Claims 38-47, as in paper number 5, along with new claims 48-53, are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearson '232 in view of Blechle et al. '864. Pearson '232 discloses the elements previously discussed but does not disclose: displaying and entering data via a touch screen; receiving data read from an object. Blechle et al. teaches: displaying and entering data via a touch screen (col. 4 L 20-38); receiving data read from an object (col. 4 L 3-

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19). It would have been obvious to display and enter data via a touch screen because a touch screen display is convenient and simple and easier to use than keyboards and takes up no more space than the monitor takes absent the touch screen feature as taught by Blechle et al. '864. It would have been obvious to read data from an object as taught by Blechle et a. '864.

10. Claims 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearson '029. Pearson '029 discloses the elements previously disclosed and further suggests:

(re: cl 51) step (e) includes unlocking a drawer to enable access to the at least one of the type medical item (c5 L 64-c 6 L 4);

(re: cl 53) opening the at least one lock to enable access to the storage location (c5 L 64-c 6 L 4). It would have been obvious for Pearson '029 to limit access to the drawers and storage areas as suggested by Pearson '029 because limiting dispensing access via processor controlled locks infers and is most effective if the locks are further limiting access to the drawers and storage areas.

11. Claims 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halverson. Halverson discloses:

(re: cl 48) placing at least one unit of a plurality of types of medical items in a plurality of storage locations, wherein each storage location holds only one type of medical item at a time (c 7 L 10-36);

removing at least one unit of a type medical item from a storage location with a dispenser mechanism (c 3 L 28-63);

modifying data in at least one data store through operation of at least one processor, wherein the at least one processor is in operative connection with the at least one data store, the data entry device and the dispenser mechanism, wherein the data is

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modified responsive to performance of steps (b) and (c) to include data representative of the dispense of the type medical item for the patient (c 5 L 3-25);

(re: cl 49) receiving user identifying data from a user through at least one input device (c 11 L 10 with c4 L 28-32);

determining through operation of at least one processor that the user identifying data input in step (a) corresponds to authorized user data in at least one data store that is in operative connection with the at least one processor (c4 L 27-32);

inputting patient identifying data through at least one input device in operative connection with the at least one processor, wherein the patient identifying data corresponds to a patient (c3 L 15-27);

inputting medical item data corresponding to a type medical item through at least one input device in operative connection with the at least one processor (c 5 L 35-65);

providing access to at least one of the type medical item to the user from a storage device responsive to performance of at least one of steps (b) and (d) (c 3 L 28-63);

storing data in at least one data store in operative connection with the at least one processor indicating that the at least one of the type medical item has been provided for the patient (c 5 L 31-66);

(re: cl 50) step (e) includes dispensing the at least one of the type medical item from a dispenser device (c 3 L 28-63);

(re: cl 52) step (e) includes releasing the at least one of the type medical item from a device holding such type item (c 3 L 28-63).

(re: cl 53) opening the at least one lock to enable access to the storage location (c3 L 53-63).

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Halverson does not inherently disclose but suggests: inputting patient identifying data through at least one data entry device, wherein the patient identifying data corresponds to a patient (c10 L 1 –c11 L 6 inferred with patient id data). It is inferred and would have been obvious for Halverson to perform the steps associated with this hardware because the patient identifying data is tracked in the system and stored in the memory and the data needs entry to be placed within the system before tracking begins.

Halverson does not disclose: unlocking a drawer to enable access to the at least one of the type medical item, but as the system discloses patient drawers and unlocking doors, it would have been obvious for Halverson to unlock drawers as a means of control patient specific medications.

Response to Arguments

12. Applicant's affidavit antedates the Meador reference with respect to claims 38 and 48 and is effective in overcoming the rejections relying upon Meador as evidence of prior art for claim 38 and preemptively claim 48.

13. The applicant's affidavit does not antedates the Pearson '232 reference as Pearson '232 is entitled to earlier priority dates with respect to material disclosed in applications from which it claims CIP priority. Pearson '232 claims CIP priority to Pearson '029 which fully discloses the elements from which the rejections of which Pearson '232 relied upon in rejecting claims 38-50 and 52, therefore Pearson '232 is entitled to the priority date of Pearson '029 which is at least 8/29/91 with respect to the identified claims, and with some elements 11/8/89.

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Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (703) 308-8344.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis, can be reached on (703) 308-2560. The fax number for the Group is (703) 305-7687.

Michael E. Butler

Michael E. Butler
Examiner

CP Ellis 11/15/00
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